IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4805 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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IR ARORA,EXECUTIVE ENGINEER (MECH.) - Petitioner(s)
Versus
ONGC THROUGH REGIONAL DIRECTOR & 2 - Respondent(s)

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Appearance :
MR DG CHAUHAN for Petitioner(s) : 1,
M/S TRIVEDI & GUPTA for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 06/11/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for a writ, direction or order, quashing and setting aside the action of the respondents

and directing the respondents to grant the same pay-scale at par with his juniors, Shri L.S. Gill, Shri M.S. Saraswat, Shri K.K. Patil and Shri S.K. Roy, with effect from 26.8.1976 with interest at the rate of 18% p.a. It is further prayed to direct the respondents to pay difference of salary from 26.8.1976. It is the contention on behalf of the petitioner that he was appointed as Technician Grade-II [Fitter/Mechanic] and joined the respondent Corporation on 4.7.1966. One Shri L.S. Gill and Shri M.S. Saraswat joined the Corporation on 4.7.1966 and 29.9.1966 respectively in the same pay-scale. It is averred in the petition that the petitioner is senior than the aforesaid two officers. It is submitted that in view of merger in the basic pay Shri L.S. Gill and Shri M.S. Saraswat were drawing higher pay-scale than the petitioner. It is further submitted that the petitioner was working as Executive Engineer [Mechanical] and the aforesaid Shri L.S. Gill and

Shri M.S. Saraswat were also working as Executive Engineers discharging the same nature of duties and functions with similar responsibilities. It is submitted that in the case of Shri L.S. Gill vs. O.N.G.C. Ltd., involving identical facts, this Court by Judgment and Order dated 5th October 1994 passed in Letters Patent Appeal No. 474 of 1994 held that the said Shri L.S. Gill is entitled to pay-scale and salary which is paid to one Shri M.S. Saraswat. It is submitted that this Court held that in the same cadre and in the same pay-scale different standards cannot be allowed. It is further submitted that relying upon the judgment of the Division Bench in the aforesaid Letters Patent Appeal this Court again granted the said benefits to junior officers of the petitioner. It is submitted by the petitioner that the facts in the case of Shri L.S. Gill and S.K. Roy's case are identical and for the same relief. It is submitted that several representations were made by the

petitioner and notice dated 17.10.1985 was also issued upon the respondent requesting the Corporation to step-up the pay-scale of the petitioner at par with his junior Shri L.S. Gill but the respondent did not respond to the same. It is submitted that lastly when the representation was made the petitioner was informed by communication dated 22.9.1995 that as the case of Shri L.S. Gill has been sent to the headquarters for rectification by the competent authority, his case will be considered as and when decision of the headquarter is arrived at. It is submitted that thereafter no decision has been taken and therefore the petitioner has approached this Court for the aforesaid relief.

3. No affidavit-in-reply is filed on behalf of the respondents opposing the petition and/or controverting the averments in the petition. The learned advocate appearing on behalf of the respondents is also not in position to

distinguish the judgment of the Division Bench of this Court in Letters Patent Appeal No. 474 of 1994 as well as the judgment of the learned Single Judge of this Court in Special Civil Application No. 9208 of 1995 and is not in position to point out whether the case of the petitioner is distinguishable by the cases of the aforesaid two employees.

4. Heard the learned advocates appearing for the parties. It is not in dispute that the petitioner was appointed as 'Technician' Grade-II [Fitter-Mechanic]; on 4.7.1966 one Shri L.S. Gill was also appointed on the same date on the same post; and one Shri M.S. Saraswat was appointed on the same post on 29.9.1966. In the seniority list of Technicians-Grade-II, the petitioner was at Serial No. 108 whereas the said Shri L.S. Gill and Shri M.S. Saraswat were at Serial No. 117 and 150 respectively. Accordingly, the petitioner was senior to Shri L.S. Gill as well as Shri

M.S. Saraswat. Shri L.S. Gill preferred Special Civil Application No. 8971 of 1993 which was carried in Letters Patent Appeal being Letters Patent Appeal No. 474 of 1994, and the Division Bench of this Court directed the respondents to step-up the basic pay of said Shri L.S. Gill and fix it at the same figure which was payable to Shri Saraswat. The respondents were further directed to pay the difference in salary for 3 years prior to the filing of the writ petition, i.e., with effect from 30th August 1990. The Division Bench also directed that the basic-pay should be refixed and to pay the arrears to him within the period of 6 weeks. It also appears from the record that one Shri S.K. Roy preferred Special Civil Application No. 9208 of 1995 claiming the same benefit and the learned Single Judge of this Court, vide judgment and order dated 15.4.1996, relying upon the judgment of the Division Bench of this Court in L.P.A. No. 474 of 1994, allowed the said Special Civil Application

and directed the respondents to step-up the basic-pay and fix it at the same figure which was payable to Shri K.K. Patil. Thus, in case of juniors to the petitioner, it was directed to step-up the basic pay. It also appears from the record that in the case of Shri Saraswat as well as in the case of Shri Gill, the difference in the pay-scale arose because of not merging Drilling Allowance particularly in case of Shri Gill. Similar is the case so far as the petitioner is concerned. The Division Bench of this Court held that, to treat two similarly situated persons by paying different pay-scale and/or salary would be treating them unequally and violative of Article 14 of the Constitution of India. It is not in dispute that the case of the petitioner is squarely covered by the decision of the Division Bench of this Court in L.P.A. No. 474 of 1994 as well as the decision of the learned Single Judge of this Court in Special Civil Application No. 9208 of 1995. The learned

advocate appearing on behalf of the respondents is not in position to distinguish the facts of the petitioner with that of aforesaid 2 cases and is also not in position to convince this Court to take a different view.

5. Under the circumstances, and for the reasons stated in the judgments rendered in Letters Patent Appeal No. 474 of 1994 as well as Special Civil Application No. 9208 of 1995, the present Special Civil Application is required to be allowed. Accordingly, the same is allowed. The respondent Corporation is directed to step-up the basic pay of the petitioner and fix it at the same figure which was payable to Shri L.S. Gill as well as Shri M.S. Saraswat and/or juniors to the petitioner. The respondents are further directed to pay up the difference in salary for the 3 years prior to filing of the writ petition,i.e., with effect from 17.6.1993, and for the rest it should be considered notionally.

The basic-pay should be refixed and arrears to be paid to the petitioner within the period of six weeks from today. On refixing the basic-pay if the petitioner is entitled to pension, his pension amount should be refixed accordingly. This petition is accordingly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

RMR.